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**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

11 In the Matter of the Statement of Issues Against:

Case No. 2008-294

12 **EMILITA JUNIO CUSTODIO**

OAH No. L-2008050602

13 1537 Brockton Ave., Apt. 6

14 Los Angeles, CA 90025

**DEFAULT DECISION
AND ORDER**

15 7607 Blossommist Lane

16 Richmond, TX 77469-2788

[Gov. Code, § 11520]

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Applicant/Respondent.

FINDINGS OF FACT

1. On or about April 23, 2008, Complainant Ruth Ann Terry, M.P.H., R.N., in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, filed Statement of Issues No. 2008-294 against Emilita Junio Custodio (Respondent) before the Board of Registered Nursing (Board).

2. On or about March 17, 2003, Respondent filed an application dated February 25, 2003, with the Board of Registered Nursing to obtain an Application for RN Licensure by Endorsement. On or about March 24, 2003, the Board issued Temporary License No. RTL 554106 to Respondent. The temporary license expired on March 25, 2004 and has not been renewed.

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1 3. On or about June 1, 2005, the Board issued a letter denying Respondent's
2 application for an Application for RN Licensure by Endorsement. On or about July 28, 2005,
3 Respondent appealed the Board's denial of her application and requested a hearing.

4 4. On or about April 30, 2008, Thurman Peden, an employee of the
5 Department of Justice, served by Certified and First Class Mail a copy of the Statement of Issues
6 No. 2008-294, Statement to Respondent, Request for Discovery, Notice of Defense (2 copies),
7 Discovery Statutes (Government Code sections 11507.5, 11507.6, 11507.7) and Disciplinary
8 Guidelines to Respondent's address on the application form, which was and is 1537 Brockton
9 Ave., Apt. 6, Los Angeles, CA 90025. A copy of the Statement of Issues is attached as Exhibit
10 A, and is incorporated herein by reference.

11 5. Service of the Statement of Issues was effective as a matter of law under
12 the provisions of Government Code section 11505, subdivision (c).

13 6. A Notice of Hearing was served by express mail at Respondent's address
14 on the application and it informed her that an administrative hearing in this matter was scheduled
15 for September 8, 2008. On or about September 5, 2008, Respondent transmitted a 2-page
16 facsimile to the Office of the Attorney General stating she would not appear at the hearing. A
17 copy of the facsimile is attached as Exhibit B, as is incorporated herein by reference. On
18 September 8, 2008, Respondent failed to appear at that hearing.

19 7. Business and Professions Code section 118 states, in pertinent part:

20 (a) The withdrawal of an application for a license after it has been filed
21 with a board in the department shall not, unless the board has consented in writing
22 to such withdrawal, deprive the board of its authority to institute or continue a
proceeding against the applicant for the denial of the license upon any ground
provided by law or to enter an order denying the license upon any such ground.

23 8. Government Code section 11506 states, in pertinent part:

24 (c) The respondent shall be entitled to a hearing on the merits if the
25 respondent files a notice of defense, and the notice shall be deemed a specific
26 denial of all parts of the accusation not expressly admitted. Failure to file a notice
of defense shall constitute a waiver of respondent's right to a hearing, but the
agency in its discretion may nevertheless grant a hearing.

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1 9. California Government Code section 11520 states, in pertinent part:

2 (a) If the respondent either fails to file a notice of defense or to appear at
3 the hearing, the agency may take action based upon the respondent's express
4 admissions or upon other evidence and affidavits may be used as evidence without
5 any notice to respondent; and where the burden of proof is on the respondent to
6 establish that the respondent is entitled to the agency action sought, the agency
7 may act without taking evidence.

8 10. Pursuant to its authority under Government Code section 11520, the Board
9 finds Respondent is in default. The Board will take action without further hearing and, based on
10 evidence on file herein, finds that the allegations, in Statement of Issues No. 2008-294 are true.

11 **DETERMINATION OF ISSUES**

12 1. Based on the foregoing findings of fact, Respondent Emilita Junio
13 Custodio has subjected her application for an Application for RN Licensure by Endorsement to
14 denial.

15 2. Service of Statement of Issues No. 2008-294 and related documents was
16 proper and in accordance with the law.

17 3. The agency has jurisdiction to adjudicate this case by default.

18 4. The Board of Registered Nursing is authorized to deny Respondent's
19 application for licensure based upon the following violations alleged in the Statement of Issues:

20 a. Business and Professions Code section 480, subdivision (a)(2) -
21 dishonest acts;

22 b. Business and Professions Code sections 2761, subdivision (d) and
23 2795, subdivision (a) - practice nursing without a license;

24 c. Business and Professions Code section 2761, subdivision (a)(4) -
25 denial of licensure by another state agency;

26 d. Business and Professions Code section 480, subdivision (a)(3) -
27 acts which would have warranted discipline if done by a licensee.

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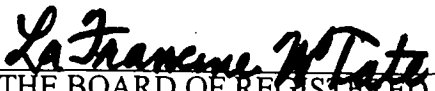
1 **ORDER**

2 IT IS SO ORDERED that the application of Respondent Emilita Junio Custodio is
3 hereby denied.

4 Pursuant to Government Code section 11520, subdivision (c), Respondent may
5 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
6 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
7 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
8 statute.

9 This Decision shall become effective on January 4, 2008.

10 It is so ORDERED December 4, 2008

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13 FOR THE BOARD OF REGISTERED NURSING
14 DEPARTMENT OF CONSUMER AFFAIRS

15 DOJ docket number: LA2005600800
16 60335904.wpd

17 **Attachments:**

18 Exhibit A: Statement of Issues No. 2008-294
19 Exhibit B: Facsimile from Respondent dated September 5, 2008
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Exhibit A
Statement of Issues No. 2008-294

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 GLORIA A. BARRIOS
Supervising Deputy Attorney General
3 LINDA L. SUN, State Bar No. 207108
Deputy Attorney General
4 300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
5 Telephone: (213) 897-6375
Facsimile: (213) 897-2804

6 Attorneys for Complainant

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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues Against:

Case No. 2008-294

11 **EMILITA JUNIO CUSTODIO**

12 1537 Brockton Ave., Apt. 6
Los Angeles, CA 90025

13 7607 Blossommist Ln.
14 Richmond, TX 77469-2788

STATEMENT OF ISSUES

15 Applicant/Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Statement of
20 Issues solely in her official capacity as the Executive Officer of the Board of Registered Nursing
21 (Board), Department of Consumer Affairs.

22 2. On or about March 17, 2003, the Board received an Application for RN
23 Licensure by Endorsement from Emilita Junio Custodio (Respondent). On or about February 25,
24 2003, Emilita Junio Custodio certified under penalty of perjury to the truthfulness of all
25 statements, answers, and representations in the application. On or about March 24, 2003, the
26 Board issued Temporary License No. RTL 554106 to Respondent. The temporary license
27 expired on March 25, 2004 and has not been renewed. The Board denied the application on
28 June 1, 2005. On or about July 28, 2005, Respondent appealed the decision.

1 JURISDICTION

2 3. This Statement of Issues is brought before the Board under the authority
3 of the following laws. All section references are to the Business and Professions Code (Code)
4 unless otherwise indicated.

5 STATUTORY PROVISIONS

6 4. Section 480 of the Code states:

7 "(a) A board may deny a license regulated by this code on the grounds that the
8 applicant has one of the following:

9

10 "(2) Done any act involving dishonesty, fraud or deceit with the intent to
11 substantially benefit himself or another, or substantially injure another; or

12 "(3) Done any act which if done by a licentiate of the business or profession in
13 question, would be grounds for suspension or revocation of license.

14 "The board may deny a license pursuant to this subdivision only if the crime or
15 act is substantially related to the qualifications, functions or duties of the business or profession
16 for which application is made.

17 5. Section 2761 of the Code provides:

18 "The board may take disciplinary action against a certified or licensed nurse or
19 deny an application for a certificate or license for any of the following:

20 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

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22 "(4) Denial of licensure, revocation, suspension, restriction, or any other
23 disciplinary action against a health care professional license or certificate by another state or
24 territory of the United States, by any other government agency, or by another California health
25 care professional licensing board. A certified copy of the decision or judgment shall be
26 conclusive evidence of that action.

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“(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or regulations adopted pursuant to it.”

6. Section 2795 of the Code provides,

“Except as provided in this chapter, it is unlawful for any person to do any of the following:

“(a) To practice or to offer to practice nursing in this state unless the person holds a license in an active status.”

FIRST CAUSE FOR DENIAL

(Dishonest Acts)

7. Respondent's application is subject to denial under Code section 480 subdivision (a)(2), for having done acts involving dishonesty, fraud or deceit with the intent to substantially benefit herself, in that Respondent worked as a registered nurse while her temporary license expired. The circumstances are as follows:

8. From about April 14, 2003 to about May 27, 2004, Respondent was employed at the Good Samaritan Hospital, Los Angeles as a registered nurse on a temporary license, which expired on March 25, 2004.

9. From about August 27, 2004 to about April 1, 2005, Respondent was employed as a registered nurse at Country Villa Westwood, Los Angeles while her temporary license had already expired on March 25, 2004.

SECOND CAUSE FOR DENIAL

(Practice Nursing Without a License)

10. Respondent's application is subject to denial under Code sections 2761 subdivision (d) and 2795, subdivision (a), in that Respondent practiced or offered to practice nursing in this state without a valid license. The circumstances are as described in paragraphs 7-9 above, and are incorporated herein as if fully set forth.

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1 **THIRD CAUSE FOR DENIAL**

2 **(Denial of Licensure by the Arizona State Board of Nursing)**

3 11. Respondent's application is subject to denial under Code section 2761
4 subdivision (a)(4), for unprofessional conduct, in that Respondent's license was denied by the
5 Arizona State Board of Nursing. The circumstances are as follows:

6 a. On or about March 8, 2005, Respondent submitted a professional nurse
7 application by endorsement to the Arizona State Board of Nursing.

8 b. On or about September 23, 2005, Respondent's application for a license to
9 practice as a professional nurse in the State of Arizona was denied and Respondent did not
10 appeal the decision.

11 **FOURTH CAUSE FOR DENIAL**

12 **(Acts Which Would Have Warranted Discipline)**

13 12. Respondent's application is subject to denial under Code section 480
14 subdivision (a)(3), for having done acts which if done by a licentiate of the business or
15 profession in question, would be grounds for suspension or revocation of license. The
16 circumstances are as described in paragraphs 7-11 above, and are incorporated herein as if fully
17 set forth.


18 **PRAYER**

19 WHEREFORE, Complainant requests that a hearing be held on the matters herein
20 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

21 1. Denying the application of Emilita Junio Custodio for an Application for
22 RN Licensure by Endorsement;

23 2. Taking such other and further action as deemed necessary and proper.

24 DATED: 4/23/08

25 
26 RUTH ANN TERRY, M.P.H., R.N.
27 Executive Officer
28 Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant